



David B. Cohen  
Mayor

CITY OF NEWTON, MASSACHUSETTS  
Department of Planning and Development  
Michael J. Kruse, Director

Telephone  
(617)-796-1120  
Telefax  
(617) 796-1142  
E-mail  
mkruse@ci.newton.ma.us

Public Hearing Date:	June 15, 2004
Land Use Action Date:	To Be Scheduled
Board of Aldermen Action Date:	August 9, 2004
90-Day Expiration Date:	September 13, 2004

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Nancy Radzevich, Chief Planner  
Eric Jerman, Senior Planner

SUBJECT: #303-01(4) FELIX SCHNEUR & IRENA GLUSKINA petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #303-01(2), granted on August 11, 2003, for a grade change in excess of 3 feet to accommodate a new single-family house (including waivers to allow existing parking to continue to serve the house at 36-38 Hood Street, the adjoining property, and to allow said existing parking space to be located within front and side yard setbacks) at 50 HOOD STREET, Ward 7, NEWTON, on land known as Sec 72, Blk 38, Lot 13, containing approximately 15,002 sf of land in a district zoned SINGLE RESIDENCE 2.

CC: Mayor David B. Cohen

---

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

I. ELEMENTS OF THE PETITION

The petitioners are seeking an amendment to a Special Permit (Board Order #303-01(2)). The petitioners, who have recently purchased the property, intend to live in the new residence upon completion of construction.

The petitioners are proposing some slight changes to the previously approved project. Some changes have been made to the façade and the location of the house has shifted slightly. Other

than these changes, the proposed project is substantially similar to the project approved by Board Order #303-01(2). Both petitions include requests for special permits for a grade change of greater than 3 ft., and for parking waivers to allow 2 parking spaces within the front/side yard setbacks. The lot at 50 Hood Street is currently vacant. It should be noted that the petitioners have submitted a request for a one-year extension in which to exercise Special Permit/ Site Plan Approval #303-01(2). The Planning Department believes that the petitioners are trying to keep that Special Permit option available, while they pursue this amendment.

The proposed grade change with retaining walls has been designed to create a small, linear back yard that runs along the rear and western side of the house. Another retaining wall is proposed to run along a portion of the south property line and also along part of the Hood Street frontage.

The petitioners are also seeking an exception to the off-street parking requirements of the Zoning Ordinance to allow the abutting neighbor at 36-38 Hood Street to continue to park on the western end of this site. This parking space has been utilized by this neighbor for many years. The proposed parking area would be entirely on the petitioners' property.

In the time that has transpired since the approval of #303-01(2), an easement has been granted to allow the abutter to park two cars on the subject property.

The petitioners suggest that the zoning for the site is Single Residence 2 (SR2), however, in his memorandum dated June 6, 2004, *the Chief Zoning Code Official raises concerns that the zoning for the subject property may, in fact, be Multi-Residence 3 (MR3). (SEE ATTACHMENT "A")*. The Law Department has said that the question of zoning extends beyond the subject property, to the surrounding neighborhood. The Planning Department notes that the proposed single-family residence would be allowed as-of-right in either zoning district, and would meet all of the density and dimensional controls (with possible exception for *number of stories*, as discussed further below) for both zoning districts. The question of zoning is not related specifically to the relief being sought by the petitioners because the special permit for a grade change of greater than 3 feet and the waivers for location of parking spaces are not tied to a specific zoning classification.

*A copy of Board Order 303-01(2) is attached. (SEE ATTACHMENT "B")*

## II. **ZONING RELIEF BEING SOUGHT**

***The petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:***

- 1) ***Section 30-5(b)(4) of the Zoning Ordinance, which allows the Board of Aldermen to grant a special permit for a grade change of 3 ft. or more;*** (Submitted plans indicate that the greatest area of grade change is approximately five feet.)
- 2) ***Section 30-15, Table 1, FN 4 allows the Board to grant a Special Permit if the proposed structure is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood;*** (The Chief Zoning Code Official has

asked for clarification of the architect's calculations to determine the area of the proposed half-story; submitted plans indicate the proposed house may have 3 stories.)

- 3) ***Section 30-19(m) of the Zoning Ordinance, which allows the Board to grant a special permit for exceptions to the requirements of the Ordinance if it is determined that literal compliance is impractical do to the size, location, and grade of a lot, or if such exceptions would be in the public interest. The following waivers are required through this section:***
  - a). ***Section 30-19(f)(1) of the Zoning Ordinance, which requires that all off street parking facilities to be located on the same premises with the use served.*** (There will be two parking spaces dedicated for the use of the abutter at 30-36 Hood Street.)
  - b). ***Section 30-19(g)(1) of the Zoning Ordinance, which requires that all parking stalls shall be located at least 5 feet from the street.*** (One parking stall will be within the side yard setback, and both will be within the front yard setback and within five feet from the street line.)
- 4) ***Section 30-21(b) of the Zoning Ordinance, which allows the Board of Aldermen to approve an extension of a nonconforming use; and*** (For the reconfiguration of the two existing parking spaces in the front setback and within 5 feet from the street, and for one space to be within the side yard setback.)
- 5) ***Section 3-024(c)(4) of the Zoning Ordinance, which requires that any approval of an application for special permit shall lapse not later than one (1) year from the grant of such approval.*** (The petitioners have requested to extend approval time for previously granted Special Permit #303-01(2).)

### III. **SIGNIFICANT ISSUES FOR CONSIDERATION**

*The Board should consider the following:*

- ***Whether the proposed grade change of more than 3 ft. to create a level back yard for the new residence will have any adverse affects on the abutting neighbors;***
- ***Whether the continued use of a portion of the petitioners' land for a pre-existing parking area for an abutting neighbor is appropriate and whether it will have a negative impact on private way; and***
- ***Whether the reconfiguration and formalization of the two existing parking spaces for the abutter, in the front setback will be substantially more detrimental to the neighborhood than the existing, informal parking area.***

### IV. **CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

#### A. **Site**

The site is located at 50 Hood Street near the Newton Corner village center. Hood Street is a narrow, one block long, private way that is accessed off of Nonantum Street

on Farlow Hill. Though the street is paved, the asphalt surfacing is in poor condition and broken and eroded along the street edges where the neighborhood residents have parked.

The petitioners' site consists of an approximately 15,002 sq. ft. lot. The site is a 5-sided, "pork chop" shaped lot. The lot includes approximately 125 ft. of frontage along Hood Street and slopes steeply down from the Hood Street frontage resulting in an approximately 32% change in grade from the front (top) to the rear (bottom).

The site is currently covered with trees ranging in size from 8" to 24" in diameter with a thick undergrowth of saplings. Though the center of the lot will be cleared for construction, the landscape plan indicates that the trees along the western lot line will be preserved. All of the trees in the rear portion (approx. 1/3) of the site will also be preserved.



Photo #1: Steeply sloping, vacant lot at 50 Hood Street. Hood Street (private way), left of image. 36-38 Hood Street is visible to the center of image.



Photo #2: Site of proposed 2 parking spaces to be designated for the use of abutter at 36-38 Hood Street. Abutter's two-family residence is at right of image. Car pictured at left of image appears to be parked in the private way (Hood Street).

#### B. Neighborhood

The petitioners' site is located on the edge of the City of Newton, near the Boston /Newton Line (one lot to the east of the subject property). The petitioners believe that the subject property is part of a Single-Residence 2 District that extends south, along the Newton Commonwealth Golf Course. A Multi-Residence 1 District is located to the north and extends to the Newton Corner commercial area, the neighborhood is primarily comprised of single-family homes.

## V. ANALYSIS

### A. Technical Considerations

The following table compares the existing residence and the proposed new residences and lots to the technical requirements for a single family structure in a MR3 and SR2 Zoning Districts:

MR3/ SR2 District	Required MR3/ SR2	As Approved per B.O. #303-01(2)	Proposed
Minimum lot size	10,000/ 15,000 s.f.	15,002 s.f.	15,002 s.f.
Frontage	80' / 100'	100'	100'
Setbacks			
Front (average of 2 abutting residences)	16.4'	16.5'	17.6'
Side w/ #36-38 Hood St	7.5' / 15'	37.2'	34.87'
Side w/ #52 Hood St.	7.5' / 15'	15.5'	15.8'
Rear	15'	27.4'	21.3'
Floor Area Ratio	0.4/ 0.3	0.24	<b>.29</b>
Building height	30'	30'	30'
Max. # of stories	2 ½	2 ½	<b>3</b>
Max. building lot coverage	30% / 20%	14.94%	18.68%
Max. Garage area	> 700 sq. ft.	506 sq. ft.	679 sq. ft.
Min. amount of open space	50% / 65%	82.5%	73.63%

As shown in the table above, the new house and lot meet all the dimensional requirements for lot size, open space, and setback requirements for both the MR3 and SR2 Districts. It is important to note that although a 30 ft. front setback is typically required in an SR2 District, Section 30-15(d) allows the front setback for a new residence to be reduced, based on the average setback of the two abutting properties. In this case the residence to the west is setback 2.8 ft, and to the east, 30 ft., from their respective front property lines. As such the minimum setback requirement for this structure is 16.4.

The submitted plans indicate that the proposed house will have an FAR of .29, which is slightly less than the maximum FAR allowed by the Zoning Ordinance. In his Zoning Determination, (*SEE ATTACHMENT "A"*) the Chief Zoning Code Official noted that "further clarification will be required to ensure compliance with Floor Area Ratio."

The petitioners are seeking to change the existing grade of the land by more than three feet, with the largest proposed change of grade to be approximately five feet.

The submitted plans indicate that the basement qualifies as a full story.

The architect's calculations on the submitted plans states the top story meets requirements for a half (1/2) story whereby the floor area of the top story under a sloping roof at a height of 7 ft – 3 in. is less than 2/3 of the floor area below. In his Zoning Determination, (**SEE ATTACHMENT "A"**) the Chief Zoning Code Official has stated that "the calculation provided on plan exceeds the 2/3 maximum. Further clarification will be required to establish compliance with this requirement. Structures with three stories require approval pursuant to a Special Permit as stated in Section 30-15, Table 1, Footnote 4 and may not derogate from other nearby structures." The architect's calculations to determine if there is a 1/2 story will be subject to review by the Commissioner of Inspectional Services. ***Prior to the Working Session, the petitioners shall respond to all issues raised by the Commissioner of Inspectional Services.***

The petitioners are requesting to construct two parking spaces on their property at 50 Hood Street to be dedicated for the use of the abutter, located at 30-36 Hood Street.

The petitioners are requesting that both of the two parking spaces to be constructed at 50 Hood Street and dedicated to the abutters at 30-36 Hood Street be located within five feet of the street, and be located within the front yard setback. One of the two spaces is proposed to be constructed within the side yard setback.

The petitioners are requesting to formalize an existing nonconforming parking arrangement where the abutter at 30-36 Hood Street has been parking on the property of 50 Hood Street.

The petitioners have requested to extend approval time for previously granted Special Permit #303-01(2).

The table above does include the proposed paved surface of the parking for the 2 open parking spaces granted by easement to #36-38 Hood Street.

B. Parking Analysis

Although garage parking is being provided for the new residence, the petitioners are requesting a special permit to allow the abutting neighbor to the west to park on the petitioners' lot. The abutting neighbor to the west had been given permission by previous owners of the site to utilize a portion of the lot for off-street parking purposes.

The residence at 36-38 Hood Street is a two-family dwelling that is set back 2.8 ft. from the front lot line. The existing structure occupies most of the approximately 3,586 sq.ft. lot. The residents at 36-38 Hood Street have been utilizing an approximately 64 sq.ft. portion of the 50 Hood Street frontage for parking, for a number of years.

The Chief Zoning Code Official, in consultation with the petitioners' attorney, has determined that these existing parking "spaces" are a legal, nonconforming use. The petitioners are proposing to reconfigure and formalize these spaces, which will require Board approval as an extension of a nonconforming use, under Section 30-21(b) of the Zoning Ordinance. (**SEE ATTACHMENT "A"**)



In addition, the petitioners are seeking a special permit to allow for two waivers to the parking requirements. The first is from Section 30-19(f)(1), which requires that all off-street parking facilities be located on the same premises with the use served; the second is to Section 30-19(g)(1) of the Zoning Ordinance, which requires that all parking stalls shall be located at least 5 feet from the street

Hood Street is a private way. Currently, many of the neighboring residents utilize the “shoulder” of Hood Street to park their vehicles. The Planning Department believes that the requested parking waivers are appropriate and will, in fact, improve vehicular and pedestrian safety by allowing the vehicles to be parked off the street, in a formalized layout.

C. Building and/or Site Design

The proposed site design is substantially similar to the plan approved in petition #303-01(2). The submitted plans indicate that the footprint will increase slightly along the rear (north) and side (east) elevation.

The petitioners are requesting a special permit under Section 30-5(b)(4) to change the existing grade around a new residence and to create a level rear yard at the rear of the building. Since the petitioners’ site is steeply sloped, it appears that the re-graded level area will require retaining walls approximately 5 ft. in height. ***Prior to the Working Session the petitioner shall submit additional information that clarifies the maximum and average heights for each of the three proposed retaining walls.***

In his Zoning Determination, the Chief Zoning Code Official noted that calculations provided on the architectural plans indicate that the top story exceeds the square footage allowable under the Zoning Ordinance’s definition for a half (1/2) story. The Chief Zoning Code Official noted in his memo that, “structures with three stories require approval pursuant to a Special Permit as stated in Section 30-15, Table 1, Footnote 4 and may not derogate from other nearby structures.” ***Prior to the Working Session the petitioners shall either request a Special Permit to allow for a third story or the submitted plans shall be revised to comply with the half-story requirement of the Zoning Ordinance.***

The Planning Department notes that the proposed house appears to be larger than all existing homes on Hood Street. Revising the architectural plans, and reducing the overall square footage would help the proposed residence to fit in with the surrounding homes on the street.

Most homes on Hood Street have only a one-car garage, if any, and, therefore, the Planning Department also believes that the proposed house should be reduced to a two-car garage, at most. Removing one, or more, garage doors would also reduce the overall length of the proposed residence that appears substantially longer than neighboring, older homes. If one of the garage doors were removed, and the resulting square footage of the garage were also reduced, then the proposed FAR would be lowered, and may satisfy the concerns that were raised by the Chief Zoning Code Official in his Zoning Determination. (***SEE ATTACHMENT “A”***)



The proposed façade differs from the previously approved design. The petitioners have added a third garage door, a bay window, and a skylight. In addition to wood clapboard siding, stone facing has been added for the chimney and in the middle area of the house under the side-gabled roof. The Planning Department notes that this would be the only house on the block to have a combination of clapboard and stone façade, and the only house in the immediate neighborhood to have any stone included within the facade. The prominent stone chimney is unusual, if not unique on this block and the block immediately to the north (Rogers Street). Window shutters that appeared on previous architectural plans have been removed, which matches the surrounding homes. The submitted plans indicate that there will be an overall increase in window area on the front façade, and a greater design emphasis upon the front door, which has actually been expanded to two side-by-side doors.

The house design that was approved by 303-01(2) was a variation on a Cape style house and the façade appeared to fit in with the surrounding homes on Hood Street. However, the proposed house appears to be out of character with the existing homes on Hood Street or nearby Rogers Street. Homes on Rogers Street are visible from Hood Street. The Planning Department believes the currently proposed structure would better fit with the surrounding neighborhood if the stone veneer was removed from the front façade and replaced with siding shingles or other façade material common to the residences along this street.

D. Department/Commission Reviews

***The Acting City Engineer is expected to complete his site engineering review, prior to the public hearing.***

E. Visual and Landscaping Concerns

The petitioners have provided a well-developed landscape plan that includes information about the sizes, type and quantities of the landscape materials. As indicated above, almost one-third of the site will remain undisturbed. This triangular area of the rear portion of the lot contains a mix of established trees and sapling undergrowth. In addition to providing the customary foundation plantings, the petitioners' landscape plan includes a linear planting of 8-10 ft. evergreens along the rear lot line, which will help to create greater privacy for the owner of the site and the abutting neighbors, down hill and to the rear of the subject property.

The Planning Department notes that the submitted landscape plan appears to be nearly identical to the landscape plan that was submitted for a previous petition for Special Permit on this same lot. When the Land Use Committee reviewed the previously submitted landscape plan at its November 15, 2001 Working Session meeting, it asked the petitioner (not the same as the current petitioners) to consider alternatives to the White Pines used as screening along the rear (north) property line. ***Prior to the Working Session the petitioner shall consider alternatives to utilizing a landscape screen composed entirely of White Pines along the rear (north) property line.***

F. Zoning Issues

***The Chief Zoning Code Official has reviewed the application and his memo, dated June 4, 2004, is attached to this document (SEE ATTACHMENT "A").*** One of his concerns is that the underlying zoning for the site has not been satisfactorily established. The City's Law Department has reviewed the complicated zoning history for the subject property and has determined that the uncertainty of the zoning extends beyond the subject property, to the surrounding neighborhood. The matter is currently under investigation by the Law Department, the Planning Department and the City Clerk.

***The question of the underlying zoning is actually not directly connected with the relief being sought by the petitioners.*** The proposed single-family residence could be constructed by-right in either the SR2 or the MR3 zone district, based on the dimensional controls of the ordinance, a special permit for a grade change over 3' and the requested parking waivers are not related to the underlying zoning. As such, the underlying zoning, should not impact the Board's review of the elements of this petition.

G. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements, including regulation of the number, design and location of access driveways and the location and design of handicapped parking. The sharing of access driveways by adjoining sites is to be encouraged wherever feasible

By formalizing the off-street parking on the subject site, and relocating it from the private way onto private property, the convenience and safety of vehicular and pedestrian traffic should be improved.

2. Screening of parking areas and structure(s) on the site from adjoining premises or from the street by walls, fences, plantings or other means. Location of parking between the street and existing or proposed structures shall be discouraged

With the preservation of mature landscaping along the rear and side, plus the new landscaping the residence, retaining walls and the two vehicles in the front setback should be sufficiently screened.

3. Avoidance of major topographical changes; tree and soil removal shall be minimized and any topographic changes shall be in keeping with the appearance of neighboring developed areas

The proposed 3' grade change and retaining walls appear to be appropriate to allow for level, usable yard space. The proposed parking in front with retaining walls is consistent with properties on Farlow Hill. ***The Acting City Engineer should be expected to review site plans and drainage calculations to assure that the change in topography will not impact the abutters.***

H. Relevant Special Permit Criteria

1. The specific site is an appropriate location for such use, structure

Although, ideally, it would be more appropriate for the abutting neighbor to park on his own land, because of the limited size of the abutting site and location of the existing residences, the lot could not accommodate a standard parking area. There is sufficient land area to accommodate these spaces on the 50 Hood Street parcel, and the formalization of these spaces will help to reduce parking impacts along the private way. The grade changes for the rear yard and areas around the proposed single-family residence appear to be appropriate and will increase the usefulness of the site for the owners.

2. The use as developed and operated will not adversely affect the neighborhood.

It appears that the proposed regrading, and retaining walls should not adversely affect the neighborhood because the drainage will be contained on site.

It appears that the parking waivers will not adversely affect the neighborhood because it will allow for the removal of cars from the street, and the parking spaces will be screened visually by landscaping.

VI. **SUMMARY**

This is an amendment of petition #303-01(2), which was approved by the Board but the one-year period lapsed without being exercised. The filing for #303-01(4) is substantially the same as #303-01(2).

The petitioners are requesting a special permit under Section 30-5(b)(4) to change the existing grade around a new residence and to create a level rear yard at the rear of the building. Since the petitioners' site is steeply sloped, the re-graded level area will require retaining walls approximately 5 ft. in height. Since the neighborhood is comprised of undulating topography, the use of grade changes and retaining walls to create more usable front and back yards is common and in character with the neighborhood.

The petitioners are also proposing to allow his abutting neighbor to continue parking on his site. Section 30-19(m) allows exceptions to the requirements of the Ordinance. The petitioners are requesting a special permit to allow this practice to continue. Hood Street is currently a private way and other neighbors park along its side lines. The formalization and reconfiguration of these 2 existing parking stalls should improve vehicular safety as the vehicles will be moved out of the private way.

The submitted architectural plans require revisions and/or clarification of the calculations to ensure that the structure will satisfy the Zoning Ordinance requirements for FAR, and half-story (on the top floor).

***Prior to the Working Session:***

1. ***The petitioners should respond to all issues raised by the Acting City Engineer.***
2. ***The petitioners should respond to all issues raised by the Commissioner of Inspectional Services.***

3. *The petitioners should submit additional information that clarifies the maximum and average heights for each of the three proposed retaining walls.*
4. *The petitioners should either request a Special Permit to allow for a third story or the submitted plans should be revised to comply with the half-story requirement of the Zoning Ordinance.*
5. *The petitioners should consider alternatives to utilizing a landscape screen composed entirely of White Pines along the rear (north) property line.*